

Advisory Opinion

IECDB AO 2006-07

May 30, 2006

Brent R. Appel
Wandro, Baer & Appel, PC
2501 Grand Avenue, Suite B
Des Moines, Iowa 50312

Dear Mr. Appel:

This opinion is in response to your letter of May 3, 2006, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(11) and Board rule 351—1.2. We note at the outset that the Board’s jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

We understand you request this opinion in your capacity as the attorney for the Iowa Democratic Party (IDP). You advise us that the IDP wants to make expenditures from its building fund and wants to ensure that these expenditures comply with Board rule 351—4.24.

QUESTION:

What types of expenditures does “associated with the building” cover in Board rule 351—4.24?

OPINION:

Board rule 351—4.24, in pertinent part, states:

“Pursuant to Federal Election Commission Advisory Opinion 2004-28, the board will permit a state statutory political committee (state party committee) to receive contributions from corporations, insurance companies, and financial institutions when those contributions are placed in the state party building fund account, the

contributions are used to pay for costs associated with the building, and all transactions involving the fund are disclosed pursuant to this rule.”

The rule then goes on to set out specifics concerning the reporting of building fund transactions, but does not expressly state what types of expenditures may be made from the fund or define “costs associated with the building.”

We first note that the ability of state party committees to accept contributions from corporations, insurance companies, and financial institutions for purposes of maintaining party headquarters has been a source of confusion for over two decades. The Board interpreted state law as prohibiting the acceptance of contributions from these sources.¹ However, federal campaign law permitted state parties to accept these contributions.² Adding to this confusion was that federal law referenced state law and the federal laws were dramatically amended during this time period.

To resolve these issues, the Board adopted rule 351—4.24. The rule permits the parties to accept contributions from otherwise prohibited contributors so long as the contributions are placed in a building fund account, publicly disclosed, and the expenditures from the fund are used to “pay for costs associated with the building.”

As part of your opinion request, you set out a number of proposed expenditures from the IDP building fund as follows: property taxes, computer equipment, telephone systems, copying machines, furnishings, utilities, pest control, cleaning services, security service, trash, lawn care, lease payments for satellite offices, mortgage payments, building repairs (both ordinary and “major”), technology services such as Internet and cable television, general office expenses such as office supplies, postage, and shipping.

In reviewing the list of proposed expenditures from the IDP building fund, as well as to provide all state political party committees with future guidance, the Board will view expenditures from state party building fund accounts with the following guiding principles:

1. No moneys from a state party building fund may be contributed directly to a state or local candidate or to a state or local PAC (except for a ballot issue PAC) in the form of monetary or in-kind contributions.
2. No moneys from a state party building fund may be used to “expressly advocate” for or against clearly identified candidates.³
3. Costs such as property taxes, furnishings, utilities, pest control, lawn care, security and trash services, lease payments of satellite offices, mortgage payments, major and minor repairs to the building, Internet and cable television services are all examples of permissible expenditures from the state party building fund. Other costs directly attributable to the maintenance, upkeep, and overhead of a state party building are also permissible.

4. The portion of computer equipment, telephones, and general office supplies that are not used for contributions as discussed above or “express advocacy” communications may be paid for through the building fund.⁴

In closing, the Board notes that the application of Board rule 351—4.24 and this opinion applies solely to the ability of state political parties to maintain a building fund and does not apply to candidates, county central committees, and state or local PACs that advocate for or against candidates.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Janet Carl, Vice Chair
Gerald Sullivan
Betsy Roe
John Walsh
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

¹See Iowa Code section 68A.503 (formerly cited as Iowa Code section 56.13).

²The Board notes that state political party committees are subject to federal campaign laws in a manner that does not apply to any other state or local campaign committees.

³See Iowa Code sections 68A.102(14) and 68A.102(6) and Board rule 351—4.53(1).

⁴The Board is not looking for a complicated formula on what percentage of these items is used for what purpose. Rather, the state parties should apply a common sense approach in complying with the requirements of rule 351—4.24 in light of the prohibitions in Iowa Code section 68A.503.